D.B. CENTRAL EXCISE APPEAL NO.21/2006
(UOI Vs. M/s. Bhilwara Spinners Ltd. & Anr.)

Date of order : 4.8.2006

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. V.K. Mathur, for the appellant.

Having heard learned counsel for the appellant, we are of the opinion that no substantial question of law arise for consideration in this appeal.

The appellant revenue has sought to levy duty on waste and scrap disposed of by the respondent assessee which arose out of the capital goods namely machines.

The relevant provisions which make the sale of waste and scrap of capital goods subject to levy of excise duty of its value is that if on acquisition of capital goods in Modvat Credit has been offered in respect of duty paid on such capital goods then on sale of its scrap or waste attracts the levy of excise duty payable on commodity.

The assessee has pointed out that the capital goods out of which the waste material has arisen has already been cleared even prior to the scheme of 1994

was not at all introduced. Accordingly, availing of Modvat Credit in respect of capital goods in question did not arise for consideration in this appeal. The Tribunal has held that the revenue has not been able to place on record that any Modvat Credit on capital goods out of waste and scrap was availed by the assessee. In view of the finding of fact that the controversy raised in this appeal is squarely covered by judgment of Hon'ble Supreme Court in case of CCE Vs. West Coast Industrial Gases Ltd., reported in 2003 (155) ELT 11 (SC), it cannot be said that any substantial question of law arise for consideration in this appeal.

In the facts and circumstances of the case, the appeal fails and is hereby dismissed.

(GOPAL KRISHAN VYAS), J. (RAJESH BALIA), J.

arun